ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	CC Docket No. 98-121
BellSouth Telecommunications, Inc., and	)	
BellSouth Long Distance, Inc., for Provision	)	
of In-Region, InterLATA Services	)	
in Louisiana	)	

To: The Commission, *en banc*

MOTION FOR LEAVE TO FILE ANNEXED
OPPOSITION TO BELLSOUTH PETITION FOR RECONSIDERATION

COLUMBIA TELECOMMUNICATIONS, INC. d/b/a aXessa ("aXessa"), by its attorney, respectfully requests leave of the Federal Communications Commission to file the annexed Opposition to BellSouth Petition for Reconsideration, time having expired. In support thereof, aXessa respectfully states:

In its Memorandum Opinion and Order in the captioned proceeding, FCC 98-271, adopted and released October 13, 1998 (the "MO&O"), the Commission denied for a second time BellSouth's Section 271 application to provide interLATA services in the State of Louisiana. The Commission denied BellSouth's application because, *inter alia,* "BellSouth offers collocation as the only method for competitive LECs to combine unbundled network elements" and thus fails to meet the competitive "checklist" required as a condition precedent to grant of BellSouth's application. (MO&O at ¶10).

Now pending before the Commission is a Petition for Reconsideration filed by BellSouth on November 12, 1998, alleging error by the Commission in the cited and related findings, and

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accordingly requesting reversal of the denial of its application. Under the Commission's general rules of procedure, oppositions to BellSouth's petition were due to be filed no later than November 25, 1998.

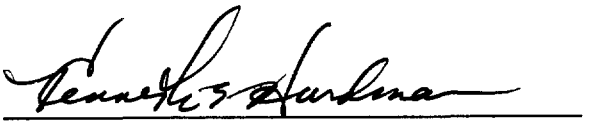
As reflected in the annexed opposition, aXessa is a facilities-based Competitive Local Exchange Carrier ("CLEC") in New Orleans, Louisiana, which has been engaged in "negotiations" with BellSouth since at least mid-July 1998 attempting to obtain transport between aXessa's distribution frame in its central office and its end user customer premises. aXessa has been attempting to obtain such tranport in various ways, including attempting to combine Unbundled Network Elements ("UNEs"), but BellSouth has refused and rebuffed all of aXessa's attempts. Ultimately, aXessa concluded that the "negotiations" with BellSouth on this issue were futile and, on January 19, 1999, filed a formal complaint with the Louisiana Public Service Commission to resolve aXessa's dispute with BellSouth.

aXessa's dealings with BellSouth arising out of its attempts to combine UNEs other than by collocation clearly are relevant and material to the Commission's findings and conclusions in denying BellSouth's application, as well as to the accuracy of BellSouth's claim in its petition for reconsideration that the Commission erred in making those findings and conclusions. Moreover, aXessa obviously could not timely file an opposition herein because its "negotiations" with BellSouth were onging as of the applicable deadline under the general rules of practice and did not irrevocably break down until after the time for filing had expired.

WHEREFORE, Columbia Telecommunications, Inc. d/b/a aXessa respectfully prays that its annexed Opposition to BellSouth Petition for Reconsideration be accepted for filing.

Respectfully submitted,

COLUMBIA TELECOMMUNICATIONS, INC. d/b/a aXessa

By: 

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February 4, 1999

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Application of BellSouth Corporation,	)	CC Docket No. 98-121
BellSouth Telecommunications, Inc., and	)	
BellSouth Long Distance, Inc., for Provision	)	
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To: The Commission, *en banc*

OPPOSITION TO BELLSOUTH PETITION FOR RECONSIDERATION

COLUMBIA TELECOMMUNICATIONS, INC. d/b/a aXessa ("aXessa"), by its attorney, respectfully opposes the Petition for Reconsideration filed on November 12, 1998, in the captioned proceeding by BellSouth Corporation, *et al.* (the "Petition"), and in opposition thereto, respectfully states:

In its Memorandum Opinion and Order in the captioned proceeding, FCC 98-271, adopted and released October 13, 1998 (the "MO&O"), the Commission denied for a second time BellSouth's Section 271 application to provide interLATA services in the State of Louisiana. The Commission denied BellSouth's application because, *inter alia,* "BellSouth offers collocation as the only method for competitive LECs to combine unbundled network elements" and thus fails to meet the competitive "checklist" required as a condition precedent to grant of BellSouth's application. (MO&O at ¶10). In pertinent part the Commission ruled that:

> BellSouth must provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Other carriers are entitled to request any 'technically feasible' method for combining network elements . . . . BellSouth has failed to demonstrate that it can provide nondiscriminatory access to

unbundled network elements through the one method it identifies for such access, collocation. (MO&O at p. 8).

In this regard, the Commission specifically cited and obviously relied upon the findings by the Department of Justice in its evaluation of BellSouth's application that:

> BellSouth has maintained policies of physically separating critical pre-existing combinations of UNEs, as well as policies which impose unnecessary costs and technical obstacles on competitors that seek to combine UNEs . . . [and] '[c]ollectively, these policies *seriously impair competition by firms that seek to offer services using combinations of unbundled network elements.*'

MO&O at ¶17. (Emphasis added).

The Commission supported its position in part by observing that:

> BellSouth's offering in Louisiana of collocation as the sole method for combining network elements is inconsistent with section 251(c)(3) [of the Communications Act]* . . . . In enacting sections 251(c)(3) and section 251(c)(6), Congress established two separate provisions that impose distinct duties on incumbent LECs in providing access to their networks* . . . . Nothing in the language of section 251(c)(3) limits a competing carrier's right of access to unbundled network elements to the use of collocation arrangements. If Congress had intended to make collocation the exclusive means of access to unbundled network elements, it would have said so explicitly. Instead, Congress adopted an additional requirement under section 251(c)(3) that imposes different and distinct duties on incumbent LECs . . . . Accordingly, we find that an incumbent LEC can not limit a competitive carrier's choice to collocation as the only method for gaining access to and recombining network elements.

MO&O at ¶¶168-170. (*Citation omitted).

Having had its interpretation of the law categorically rejected by the Commission, BellSouth argued on reconsideration simply that the Commission erred *as a matter of fact* in finding that BellSouth required collocation as the sole method by which it would permit CLECs to combine UNEs in Louisiana. BellSouth's assertions in this regard are completely contained in the following passages from its petition for reconsideration:

> Access to Network Elements. The [MO&O] *assumes* that BellSouth limits CLECs to collocation as the only method for gaining access to unbundled network elements. *That is incorrect,* as the record shows. The Commission should find that BellSouth provides all required methods of access.
>
> * * * * *
>
> BellSouth will negotiate, through a Bona Fide Request process, other methods of access that are technically feasible and consistent with the Eighth Circuit's holdings and other applicable legal rules . . . . Thus, BellSouth is in compliance with sections 51.5 and 51.321(b)(1) of the Commission's Rules, as well as section 251(c)(3) of the Act.

Petition at pp. 4, 9. (Emphasis added).

aXessa's experience demonstrates that the foregoing representations by BellSouth are utter fabrications and that, in point of actual fact, BellSouth continues to require collocation as the *sole* method by which it will permit CLECs in Louisiana to combine Unbundled Network Elements. Accordingly, the Commission should summarily reject BellSouth's Petition for Reconsideration and affirm its denial of BellSouth's application.

aXessa is a facilities-based Competitive Local Exchange Carrier ("CLEC") in New Orleans, Louisiana, which has been engaged in "negotiations" with BellSouth since at least mid-July 1998 attempting to obtain transport between aXessa's distribution frame in its central office and its end user customer premises.[1] aXessa has been attempting to obtain such tranport in

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[1] As noted *infra,* aXessa ultimately was forced to file a formal complaint at the Louisiana Public Service Commission on January 19, 1999, in an attempt to obtain resolution of its dispute with BellSouth. For the Commission's complete information, a copy of the complaint and supporting memorandum are annexed hereinafter, including the suuporting exhibits most pertinent to this Opposition, and are hereby incorporated herein by reference as if fully set forth. The annexed exhibits include illustrations of what aXessa requested (Exhibit O, Drawing 1) and what BellSouth is insiting upon (*id.,* Drawing 2), as well as BellSouth's letters dated August 26, 1998, September 25, 1998 and November 19, 1998 (Exhibits 3, 4 & 1, respectively), memorializing some of the positions taken in its "negotiations" with aXessa. The remaining exhibits filed with the Public Service Commission supporting aXessa's complaint are available to the Commission upon request.

various ways, including combining Unbundled Network Elements ("UNEs"), but BellSouth has refused and rebuffed all of aXessa's attempts. BellSouth insists that aXessa must collocate in each of BellSouth's central offices if aXessa wants to combine UNEs.

Interestingly enough, BellSouth continued to tell aXessa in their "negotiations" that collocation is the *only* permitted method of combining UNEs *despite the Commission's unequivocal rejection of that legal position in the MO&O and BellSouth failure to challenge that legal interpretation on reconsideration.* Interestingly, also, despite its shifting justifications and rampant dissembling on this issue over several months, the one thing BellSouth has *never* done is suggest to aXessa that some form of "Bona Fide Request" process for combining UNEs is available as an alternative to collocation.

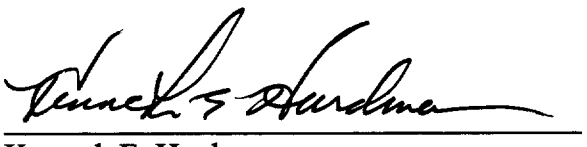
Ultimately, aXessa concluded that its "negotiations" with BellSouth on this issue were futile and, on January 19, 1999, filed a formal complaint with the Louisiana Public Service Commission to resolve aXessa's dispute with BellSouth. The complaint remains pending as of this opposition filing.

aXessa's elaborate but invariably and inevitably futile attempts to combine UNEs other than by collocation clearly demonstrate that the Commission correctly determined as a matter of fact that collocation is the only method permitted by BellSouth for combing UNEs in Louisiana. BellSouth's arguments to the contrary in its Petition for Reconsideration are simply fabrications and should be summarily rejected.

WHEREFORE, Columbia Telecommunications, Inc. d/b/a aXessa respectfully prays that BellSouth's Petition for Reconsideration be rejected.

Respectfully submitted,

COLUMBIA TELECOMMUNICATIONS, INC. d/b/a aXessa

By: 

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February 4, 1999

PSC COMLAINT AND SUPPORTING MEMORANDUM

BEFORE THE

LOUISIANA PUBLIC SERVICE COMMISSION

COLUMBIA TELECOMMUNICATIONS, INC., d/b/a AXESSA

v.

BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NUMBER U-

***In re*: Violations of the Telecommunications Act of 1996 and Local Competition Rules by BellSouth**

COMPLAINT

Columbia Telecommunications, Inc., d/b/a aXessa ("aXessa") files this complaint against BellSouth Telecommunications, Inc. ("BellSouth") for the following reasons:

1.

On July 14, 1998, aXessa and on July 22, 1998, BellSouth signed an Interconnection Agreement which was duly noticed in the Bulletin of this Commission of August 21, 1998.

2.

Starting in July 1998, aXessa and BellSouth discussed aXessa's desire for BellSouth to provide aXessa a transportation path from its switch in order to transport traffic from aXessa's switch to an enduser.

3.

On September 30, 1998, aXessa ordered such a "CLEC" loop, but was told that in order to connect the OC-3 segment from aXessa's switch to BellSouth's wire center(s), and the segment

from BellSouth's wire center(s) to the enduser (Drawing 1, Exhibit 0), aXessa had to collocate in each of BellSouth's wire center(s). BellSouth stated that it would not provide a UNE DS-1, a simple jumper, which would allow the two segments to be connected. aXessa's order initially was placed on indeterminate "hold." aXessa received various explanations why BellSouth would not provide the UNE DS-1, and, ultimately, aXessa was informed on November 17, 1998, by BellSouth that "the Interconnection Agreement between BellSouth and [aXessa] does not support [aXessa's] request for combined UNEs," without any further reference to the specific provisions of the Agreement.

4.

At this time, BellSouth provides an extended link from it central office to its customers, but, when ordered by a CLEC to connect the CLEC's customers to the CLEC central office, decombines or pulls apart various elements, and refuses to recombine them unless the CLEC collocates in the ILEC's offices.

5.

Other state commissions considering this issues have ordered one or more alternatives proposed by aXessa in the attached brief. For instance, the Staff of the Public Service Commission of Texas recommends that the Commission designate an "extended link" as a single network element, eliminating the need for CLECs to collocate in each and every office and preventing the ILEC from refusing to combine separate loop and transport elements (Exhibit "12", attached to this memorandum), a solution discussed in the Executive Summary Section and Section "K" in the attached memorandum.

The Maryland Commission ordered its ILEC to allow CLECs to purchase already

assembled packages of unbundled network elements, and decided that the ILEC could not require that UNEs transporting traffic to a CLEC be pulled apart and reassembled in a collocation space, as demanded by the ILEC. (Exhibit "11 to the Memorandum.) aXessa discusses this alternative in the Executive Summary and Section "K" of aXessa's brief.

The Oregon Commission ordered access by the CLEC's technicians to make the connection themselves on the ILEC's network, a solution discussed in Section "M" in the attached memorandum. (*See* Exhibit "8" to the memorandum.)

6.

As more fully explained in the attached memorandum, pursuant to the Telecommunications Act of 1996 and this Commission's Local Competition Rules, which encourage competition and provide the legal framework for relief requested by aXessa, BellSouth is required to provide the connection sought by aXessa. In addition, aXessa reserves all rights to seek damages incurred as a result of BellSouth's conduct in this or other forums.

7.

aXessa respectfully requests that:

a) This Complaint be processed on an expedited basis;

b) BellSouth respond to this Complaint within five (5) days and that the Staff or Administrative Law Judge be requested to prepare a report in time to be considered by this Commission prior to the February 24, 1999 meeting;

c) This matter be placed on this Commission's agenda for decision at the next Business and Executive Meeting on February 24, 1999;

d) BellSouth be ordered i) to combine the UNEs as an agent for aXessa; or ii) not to dismantle the connection to the endusers, but to sell it as one UNE at UNE prices, as BellSouth provides similar service to its customers;

e) Or in the alternative, that BellSouth be ordered to allow aXessa to combine these elements itself by direct access to BellSouth's wires; and

f) In the further alternative, that the relief set forth in Paragraphs 5(d) and (e) be provided on an interim basis if this Commission decides that it cannot make a final decision on February 24, 1999.

Respectfully submitted:

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ATTORNEYS FOR COLUMBIA TELECOMMUNICATIONS, INC., d/b/a AXESSA

BEFORE THE

LOUISIANA PUBLIC SERVICE COMMISSION

COLUMBIA TELECOMMUNICATIONS, INC., d/b/a AXESSA

v.

BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NUMBER U-

***In re*: Violations of the Telecommunications Act of 1996 and Local Competition Rules by BellSouth**

MEMORANDUM IN SUPPORT OF COMPLAINT AGAINST BELLSOUTH TELECOMMUNICATIONS, INC.

Columbia Telecommunications, Inc., d/b/a aXessa ("aXessa") files this Memorandum in Support of its Complaint against BellSouth Telecommunications, Inc. ("BellSouth") pursuant to its Interconnection Agreement and/or this Commission's Rules of Practice and Procedure, Rule 45.

A. Suggested Procedural Schedule

aXessa is not requesting that this Commission open an extensive proceeding. It suggests that BellSouth respond to this Complaint in five (5) days; and that the Staff or the Administrative Law Judge report to the Commission in time for this Commission to consider such report prior to the February 24, 1999 meeting. It further urgently requests that this Commission provide relief to aXessa at the February 24, 1999 meeting and that aXessa be allowed to present oral argument at the meeting.

B. Executive Summary

aXessa is a facilities-based carrier, which obtained authority from this Commission to provide services as an Competitive Local Exchange Carrier ("CLEC").[1] aXessa signed an Interconnection Agreement with BellSouth, in order to enable it to provide facilities-based telecommunications services in competition with BellSouth. In reliance on the Telecommunications Act of 1996 and this Commission's policies encouraging competition, aXessa was incorporated and raised money in an effort to provide meaningful competition to BellSouth. The lack of meaningful competition from other telecommunication carriers has been cited twice by the FCC in the FCC's denials of BellSouth's § 271 Applications.

Significant funds were expended by aXessa to purchase and install a switch and to start a marketing program. aXessa spent more than $4 million on the switch and other matters, and has retained personnel, office space and equipment in order to provide facilities-based telecommunication services. It would like to purchase additional switches in the future. Facilities-based competition has the highest potential of all forms of competition to provide real alternatives to the services provided by the Regional Bell Operating Companies ("R-BOCs").

In order for aXessa's switch to be connected to the network, thus allowing aXessa access to the national and international network, aXessa has been charged more than **$10,000.00 a month** by BellSouth to connect its central office, OC-3[2] and trunking equipment. BellSouth receives this

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[1] aXessa also has a certificate to provide resale services, but resale is not at issue in this dispute.

[2] The November 15, 1998, invoice from BellSouth to aXessa amounted to $10,500.00. BellSouth charges aXessa retail (tariffed) rates for the OC-3 which costs aXessa has (continued...)

amount regardless of whether aXessa serves no or only a few customers, but this amount will increase once aXessa's call volume of its customers reaches a certain point.

As finally framed by BellSouth, the dispute in this matter centers on the provision of dial tone and the transport of traffic from and to aXessa's switch to an enduser, a customer of aXessa.[3] This customer is located within one mile from BellSouth's main office. BellSouth provides this kind of service from its central office to its customers on a combined basis, *i.e.*, as one local loop. In transporting aXessa's traffic to this customer and to other customers located beyond the one mile zone, the traffic may have to go through one or more BellSouth wirecenters or central offices. BellSouth unbundles this service if it goes to a CLEC into several segments and does not provide CLECs bundled service equivalent to the service it provides to its own customers. aXessa originally ordered a DS-1 UNE from BellSouth wirecenter to aXessa's customer (Drawing 1, Exhibit 0). Upon BellSouth's refusal, aXessa then ordered a transport segment from aXessa's switch to a BellSouth's wirecenter (local channel DS-1) (which is not in dispute), as well as a local loop segment (four wire DS-1 digital loop) (which is not in dispute) transporting traffic from BellSouth's wirecenter to the enduser premises, (or another BellSouth wirecenter on the way to the consumer) (*i.e.*, interoffice transport DS-1) (Drawing 3, Exhibit 0). BellSouth has no problems providing these loop and transportation "segments," which it now calls "unbundled

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[2](...continued)
challenged. It appears that in lieu of the $10,500.00 billed by BellSouth, a monthly amount of about $5,400.00 is due. In addition, aXessa paid BellSouth $40,000.00 as an upfront lump sum to connect the OC-3.

[3] The issues however are not limited to this one customer. aXessa just cannot contract with other customers until this issue is resolved, as it will be repeated and repeated again unless resolved by this Commission.

network elements" or UNEs. BellSouth, pursuant to 47 U.S.C. § 251, must provide UNEs to a CLEC. However, BellSouth objects to providing other network elements it unbundled, *i.e.*, jumpers (cross connects) at each wirecenter, which are now needed to connect the transportation and loop segments. BellSouth's present position is that since it does not have a **duty** to combine the loop and transportation segments it unbundled, it will not provide this simple jumper as an unbundled network element to recombine two decombined transportation/loop segments. It should be emphasized that BellSouth provides one loop from the endusers to its central office for its own customers. (Drawing 4, Exhibit 0.) Realizing, however, that competition is impossible without a CLEC being able to reach its customers, BellSouth "offers" aXessa Megalink resale service (Drawing 4, Exhibit 0), and, as an alternative, suggests that aXessa "buy UNEs (DS-1LC and DS-1IOC) and **combine [them] themselves.**"[4] Rather than allowing aXessa to do so, BellSouth then takes the position that such combination can only be achieved a) by BellSouth itself; and b) exclusively through collocation. (Drawings 2 and 6, Exhibit 0.)

BellSouth's position is unlawful and discriminatory. First, it decombines elements which then have to be recombined, which produces inferior service in violation of 47 U.S.C. § 251(c)(3) and Rule 1001 of the Louisiana Public Service Commission ("LPSC") Competition Rules. Second, it seeks to force a facilities-based carrier to combine elements solely through collocation, which unnecessarily complicates access to UNEs, and discriminates against competing carriers by forcing them to combine these segments in an inferior, inefficient, and more costly manner.

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[4] Exhibit "1."

Third, as an alternative, BellSouth "offers" resale, but this option renders the purchase of facilities, such as a switch, superfluous.

Pursuant to 47 C.R.F. 51.311(b) of the FCC Regulations, Incumbent Local Exchange Carriers ("ILEC") must provide requesting carriers with access to network elements that is **equal in quality** to the access that ILECs provide to themselves. This rule was reviewed by the Eighth Circuit and left intact. This Commission in Competition Rule 1001(D) likewise requires that an ILEC provides "access, use and interconnection of all basic network elements" on "rates, terms and conditions **equivalent** to those an ILEC provides itself." aXessa merely ordered a connection from its switch to its customer. BellSouth provides such for its own customers, without collocation, and without decombining and recombining network elements. It should do likewise for aXessa.

Moreover, the FCC recently, in its second denial of BellSouth's § 271 Application, again rejected collocation as the "only method for gaining access to and **recombining** network elements." (F.C.C. Order 98-271 § 170.) Thus, aXessa asks that Commission order BellSouth to sell a network element similar to the one defined in 47 C.R.F. § 51.319,[5] except that, in lieu of a ILEC central office, the transmission is to a non-ILEC office. In the alternative, aXessa

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[5] **§ 51.319 Specific unbundling requirements.**

* * *

(a) *Local Loop*. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end user customer premises.

C.F.R. § 51.319 nor C.F.R. § 51.317 were at issue in the Eighth Circuit appeal. C.F.R. § 51.317 allows this Commission to identify network elements to be made available beyond the ones listed in C.F.R. § 51.319.

requests that this Commission order BellSouth to combine the UNEs itself. In the further alternative, since time is of the essence, aXessa is willing to have its own technicians combine the two elements on BellSouth's network, a solution recently adopted by the Public Utility Commission of Oregon (the "Oregon Commission") in response to similar recalcitrance exhibited by Oregon's ILEC.

C. Facts

Around the time of the signing of the Interconnection Agreement by aXessa and BellSouth on July 14 and 22, 1998, respectively, aXessa started negotiating with BellSouth to provide it with transport between its distribution frame in aXessa's central office to endusers' customer premises. These negotiations were not successful. On September 30, 1998, aXessa forwarded an order to BellSouth for the provision of a loop from aXessa's central office to its customer. Pursuant to its Interconnection Agreement, aXessa ordered one UNE digital voice loop to connect the enduser to aXessa's central office.[6] (Drawing 1, Exhibit 0.) BellSouth informed aXessa verbally without citing any legal support, that it was prohibited from connecting a UNE to a tariffed item, but that the only way aXessa could provide service to its customer, though only less than one mile away, was through collocation. (Drawing 2, Exhibit 0.) aXessa then suggested that it would buy two UNEs, *i.e.*, one to transport traffic from the customer to a BellSouth wirecenter, and one transporting traffic from the wirecenter to aXessa's switch. One of these UNEs would be a completely redundant, duplicating the OCS line for which aXessa already pays! (Drawing 3, Exhibit 0.) Though these two UNEs are not tariffed items, BellSouth refused to connect them

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[6] Exhibit "2." This order, for competitive reasons, is submitted under seal as it is proprietary to protect the name of aXessa's customer.

with a simple jumper, but again insisted on collocation as the only available method. BellSouth does not oppose providing two UNEs at the prices established by this Commission, but refuses to provide a UNE DS-1 jumper, which would connect a transport segment between a distribution frame in aXessa's switch with an enduser's customer premise.

As early as July, 1998, aXessa had been told by BellSouth representatives that a UNE DS-1 could not be provided to aXessa, because this Commission and the Eighth Circuit Court **required** collocation from BellSouth. aXessa informed BellSouth that this is incorrect, as unbundled network elements may be purchased either by collocation, as reflected in 47 U.S.C. § 251(c)(7), but also pursuant to 47 U.S.C. § 251(c)(3). Finally, at aXessa's request, a BellSouth representative attempted to articulate the legal basis of BellSouth's untenable position in a letter dated August 26,1998, (Exhibit "3") which stated *inter alia*, ". . . the Act itself confirms that collocation is the appropriate method of access under § 251(c)(3)" and "Congress thus envisioned that CLECs would obtain access to UNEs under § 251(c)(3) through collocation." aXessa wrote to BellSouth that this position was totally incorrect and asked for additional clarification. After numerous requests to have BellSouth support its startling position, another BellSouth representative wrote aXessa on September 25, 1998, wrongly concluding that "the Eighth Circuit ruled out any requirement of direct access to central office equipment for purposes of a new entrant's UNE combination activities,"[7] and further referring to Page 815 of the Eighth Circuit opinion. (Exhibit "4.") A review of the quote on Page 815 by aXessa showed that the reference did not support BellSouth's position, and that the Eighth Circuit had rejected the ILECs position

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[7] This statement is blatantly incorrect, as is shown in this memorandum, *supra*.

that interconnection could only take place through collocation. As a matter of fact, BellSouth's position that either physical or virtual collocation is the only way to interconnect, *i.e.*, that Section 251(c)(3) of the Act is actually part of § 251(c)(6), has now been rejected **three** times, twice before the FCC and once in the Eighth Circuit. Section 251(c)(6) imposes the duty on BellSouth to provide physical and virtual collocation "on rates, terms and conditions that are just, reasonable and non-discriminatory", but does not eliminate the duty under § 251(c)(3) to provide access to network elements. The Eighth Circuit rejected the very same argument advanced by Bell Operating Companies, stating:

> We conclude that the Commission's belief that competing carriers may obtain the ability to provide **finished telecommunications services entirely through the unbundled access provisions** in subsection 251(c)(3) is consistent with the plain meaning and structure of the Act. (Emphasis added.)

Iowa Utilities Bd. v. F.C.C., 120 F.3d 753, 815 (8th Cir. 1997). The Court specifically approved the FCC's earlier determination (Local Competition Order, 11 F.C.C. Rcd, 15499, 15666-7 (F.C.C. 1997)) to the same effect. Recently, in the FCC's second rejection of BellSouth's § 271 application, the FCC again rejected BellSouth's argument, stating:

> Accordingly, we find that an incumbent LEC can not limit a competitive carrier's choice to collocation as the only method for gaining access to and **recombining** network elements. (Emphasis added.) FCC Order 98-271, ¶ 170.

Additional communications took place between aXessa and BellSouth. Some of BellSouth's proposals are subject to confidentiality agreements and thus cannot be described here. Suffice it to say that BellSouth's proposals were unsatisfactory to aXessa. None of the proposals came close to the provision of the simple jumper UNEs at the cost requested by aXessa.

Commissioners, framing the issue based on BellSouth's previous communications. Ultimately, as a result of a position statement submitted to the Commissioners by aXessa (Exhibit "5"), BellSouth on November 19, 1998, wrote the Commissioners (Exhibit "1"). Rather than dealing with the one customer for which the UNEs were ordered, and which is located within one mile from BellSouth's switch, BellSouth indignantly, but inaccurately, informed the Commissioners that aXessa "specifically" wants to serve customers "outside of New Orleans and to have BellSouth extend them for free to their switch in New Orleans."

Thus, rather than dealing with aXessa's actual order, BellSouth anticipates that aXessa might want to serve a customer in Metairie, redefines the order in the "example drawing," and then alleges that aXessa "misstates the facts"! (*See*, Exhibit "1.") BellSouth then concludes that the crux of the matter was **not** BellSouth's previous position that the Eighth Circuit and this Commission "required" collocation to interconnect aXessa with its enduser, but that BellSouth had no **duty** to combine transportation UNEs for aXessa. Thus, BellSouth shifted its position. Moreover, as aXessa had pointed out in Exhibit "5" that its request was on indeterminate "hold," BellSouth suddenly denied aXessa's request on November 17, 1998. BellSouth merely stated, without further explanation, that the Interconnection Agreement "does not support" aXessa's request for "combined UNEs." (Exhibit "6.") Additional discussions have taken place after November 19, 1998, but were unsuccessful. Hence, solely because aXessa refuses to submit itself to collocation, BellSouth refuses to connect aXessa to its customers! Thus, BellSouth has succeeded in seriously slowing aXessa's facilities based competition unless this Commission issues a ruling.

A chronology of events detailing the extreme frustration, delay and unnecessary problems a facilities-based carrier has to go through in order to obtain simple services from BellSouth is attached as Exhibit "7."

D. aXessa Does Not Seek To Duplicate a Retail Service

In Exhibit "1," BellSouth states that aXessa's request "duplicates a retail offering," and that therefore aXessa has the option to "resell a Megalink," but that aXessa seeks to obtain this at a lower price than the 20.72% discount. (Exhibit "1" at p. 2) BellSouth's position is incorrect. aXessa is **not** seeking to resell BellSouth's service (Drawing 4 and Page 5, Exhibit 0), but to connect its switch to an enduser (Drawing 1, Exhibit 0). Therefore, the service it seeks is not identical to any retail service BellSouth provides, which it calls a "Megalink." Megalink connects an enduser to **BellSouth's** switch, not a CLEC's switch. It would make a switch superfluous. Local Competition Rule 1001 states in relevant part: "Services offered by the requesting TSP (*i.e.*, aXessa) shall not be considered 'identical' when the requesting TSP utilizes **its own switching** or other substantive functionality or capability **in combination with unbundled elements** in order to provide a service offering." BellSouth's argument that aXessa merely seeks to duplicate a service provided by BellSouth as a retail service is incorrect, as Local Competition Rule 1001 makes clear. Accordingly, BellSouth's attempt to portray aXessa as someone who unfairly seeks to obtain service at "60% discount instead of the 20.72% discount ordered by the LPSC" is false and scurrilous.

E. There Is No Prohibition To Connect A UNE To A Tariffed Item

aXessa does not know of any prohibition to connect a UNE (digital voice loop) to aXessa's central office, a tariffed item, except by collocation, as BellSouth states. (Drawing 1, Exhibit 0.)

BellSouth never articulated the basis therefor. Not all ILECs take the position that a tariffed item cannot be connected to a UNE except by collocation. Recently the Oregon Commission, in Order 98-444 entered on November 13, 1998, in Docket UT 138, 139 (the "Oregon Order") (Exhibit "8," p. 49) rejected a similar proposition imposed by U.S. West Communications, Inc. ("USWC"). In contrast, GTE freely allows such a combination:

> **B. May a Carrier Purchase ILEC Retail Services and Combine Those Services With Building Blocks? (Issue IV(D))**
>
> USWC [an ILEC] states that it will not allow requesting carriers to combine building block[8] with retail services. GTE does not oppose allowing such combinations.
>
> The Commission sees no reason why building blocks and retail services cannot be combined where the requesting carrier needs services in addition to building block functionalities. For example, OGI [a CLEC] currently combines OC3 fiber optic lines purchased out of GTE's tariff with DS1 transport facilities purchased out of the GTE building block tariff. The reason for this is that OC3 fiber facilities have not yet been denominated as a building block. Precluding OGI from purchasing this combination of fiber optic and transport facilities would penalize OGI's customers while OGI attempted to self-provision its own fiber optic lines or develop another method of supplying service. We see no basis for such a result and, accordingly, reject USWC's proposal. *The Oregon Order*, p. 49.

BellSouth's argument is not supported by law; what it merely boils down to is that it is **BellSouth's** policy not to provide these connections unless a CLEC collocates. Thus, there is no prohibition to provide aXessa the UNE illustrated in Drawing 1, Exhibit 0.

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[8] Oregon's "building blocks" are similar to UNEs, though not exactly the same. However, for the purposes of these quotes they are, as the Oregon Commission dealt with combining endusers and CLEC's central offices, and the Oregon ILECs, as BellSouth, argued that collocation is the only option to combine transport elements to and from central offices of the CLECs.

F. aXessa Is Willing To Connect The Two UNEs Itself To BellSouth's Network

BellSouth's suggestion that aXessa buy two (or more) UNEs and **"combine (these) themselves"**[9] has merit, but only if this Commission orders BellSouth to give aXessa immediate access to combine them itself. aXessa is willing to do so, but needs immediate, direct access by its own technicians to combine UNEs on BellSouth's network. The connection that is needed between two UNEs is merely a jumper, and technically not difficult to install. It will take about two to seven minutes to install. aXessa has technicians on its staff who previously were employed by BellSouth or by a small telephone company: aXessa has the technical know-how to do so. Thus, aXessa wants to do so, and is able and ready to do so immediately.

G. BellSouth Refuses To Have aXessa Connect The UNEs

However, here is the "Catch 22": BellSouth **refuses** access to its network by aXessa's own technicians! On December 2, 1998, aXessa requested such access (Exhibit "11"). The next day, BellSouth refused to allow aXessa's technicians to install the jumpers.

Thus, even though BellSouth tells this Commission that, "if [aXessa] uses BellSouth's UNEs, **it must combine those UNEs itself**" and "BellSouth stands ready to provide aXessa the UNEs it has ordered at the rates approved by this Commission. BellSouth has no obligation to combine the loop and interoffice transport aXessa has ordered; **rather it is aXessa's obligation to combine these UNEs**," when aXessa wants to combine these UNEs themselves, then BellSouth does not allow aXessa direct access to do so!

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[9] Exhibit "1."

The Eighth Circuit Court, so beloved by BellSouth, observed that the ILECs (such as BellSouth) objected to certain FCC rules (47 U.S.C. § 315(b)-(f)), which forced an ILEC to combine network elements. Accordingly, these strong objections by BellSouth (and other R-BOCs) to having to recombine these UNEs, indicated to the Eighth Circuit that the ILECs would prefer that the **new entrants themselves have access** to the ILEC networks to combine them:

> The FCC and its supporting intervenors argue that because the incumbent LECs maintain control over their networks it is necessary to force them to combine the network elements, and they believe that the incumbent LECs would prefer to do the combining themselves to prevent the competing carriers from interfering with their networks. Despite the Commission's arguments, the plain meaning of the Act indicates that the requesting carriers will combine the unbundled elements themselves; the Act does not require the incumbent LECs to do *all* of the work. ***Moreover, the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them.*** (Emphasis in bolded italics added.) *Iowa Utilities Bd. v. F.C.C.*, 120 F. 3d 753, 813 (8th Cir. 1997).

Accordingly, direct access is the way envisioned by the Eighth Circuit, and aXessa's request is thus supported by that Court, as well as by § 251(c)(3) of the Telecommunications Act of 1996.

H. BellSouth Has The Option To Combine These Elements As Required By aXessa, And Promised This Commission It Would Do So

Alternatively, there are no legal or technical reasons for BellSouth not to combine the UNEs ordered by aXessa. In fact, often a physical reconnection is not even needed, as BellSouth "bundles" these services for its own customers and now charges a CLEC to "unbundle" them, and then charges to "recombine" them.

Based on the Eighth Circuit opinion, this Commission stated in an Order dated September 5, 1997, in proceeding U-22252 (determining if BellSouth had met § 271 requirements) that: "It is specifically noted that although BellSouth has no duty under the Act to do the actual combining of network elements, **it has stated its willingness to do** so when such is feasible." BellSouth, in Exhibit "1," relied on this Order, but was silent as to this promise.

BellSouth should live up to the commitments it made to this Commission, and voluntarily combine the UNEs ordered by aXessa. This would not violate the Eighth Circuit opinion, as the ILEC's objection to combine UNEs led the Court to believe that the ILECs "would rather allow entrants access to their networks." If BellSouth does not want to provide direct access by CLECs to its network, it could recombine the UNEs itself voluntarily, at the prices reflected in the Interconnection Agreement.

I. BellSouth's Refusal To Allow Access By aXessa, Or To Rebundle The Segments For aXessa, As aXessa's Agent, Violates The Local Rules Adopted by the LPSC

BellSouth's position violates the Local Competition Rules. Section 901 of the Local Competition Rules provides, in relevant part:

> TSPs should be interconnected with the ILECs in a manner that gives the TSPs **seamless integration** into and use of local telephone company signaling and interoffice networks in a manner **substantially equivalent to that of the ILECs**. Interconnection shall include access to **switches**, databases, signaling systems **and other facilities or information** associated with originating and terminating communications. (Emphasis added.)

Section 1001(D) provides:

> D. TSPs shall be able to interconnect with all unbundled basic network components at any technically feasible point within an ILEC's network. Access, use and interconnection of all basic network components shall be on rates, terms and **conditions**

> **substantially equivalent to those an ILEC provides to itself** and its affiliates for the provision of exchange, **exchange access**, intraLATA toll and other ILEC services. (Emphasis added.)

Section 1001(F) provides:

> F. ILECs shall put into place a service ordering, repair, maintenance, and implementation scheduling system for use by TSPs, **which is equivalent** to that used by the ILECs and their affiliates for their own retail exchange services. Data pertaining to **service and facility availability** shall be made **available to TSPs in the same manner used by the ILECs** and their affiliates. (Emphasis added.)

BellSouth does not allow aXessa "access, use and interconnection of all basic network components on conditions substantially equivalent to those an ILEC provides to itself." Subsequent sections of this memo show that collocation creates substantial burdens for a CLEC, which BellSouth does not create for itself. Thus, for instance, recombination and collocation:

a) increases the number and lengths of connections, jumpers and wires;

b) decreases technical reliability;

c) increases customers outages;

d) significantly increase the up-front cost and monthly access charges for each central office or wirecenter where aXessa wants to interconnect;

e) causes significant delays in initiating service.

Consequently, BellSouth, by insisting on collocation, violates the Local Rules as the service it offers to CLECs is not equivalent to the services it provides itself.

As the Oregon Commission in Order 98-444 issued on November 13, 1998,[10] observed:

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[10] Exhibit "8."

> At the same time, we agree with Staff and Joint Intervenors that the Eighth Circuit's interpretation of the Act will produce UNE access arrangements that are **more costly, more time-consuming to provision, and less efficient from a network engineering standpoint than if unbundled elements are combined by the ILECs.** As we discuss in greater detail below, the evidence amply demonstrates **that ILEC networks were never designed to be 'decombined' and 'recombined' in the manner contemplated by the Court's decision**. It is even more unfortunate that this result has come to pass essentially because of a pricing dispute over the potential for requesting carriers to arbitrage the difference between the wholesale rate and the combined UNE rate. Our extensive experience with unbundling of telecommunications services has shown that the pro-competitive goals of the Act and this Commission will not be achieved unless regulatory policy choices correspond with efficient engineering and network management decisions. (Emphasis added.) *The Oregon Order*, p. 12.

J. BellSouth's Interconnection Agreement Requires BellSouth to Provide the Interconnection Sought by aXessa.

In the Interconnection Agreement, in Section 4, "Parity" BellSouth agreed that it "shall also provide [aXessa] with unbundled network elements, and access to those elements, that is at least equal in quality to that which BellSouth provides BellSouth, or any BellSouth subsidiary, affiliate or other CLEC."

Attachment 2, "Unbundled Network Elements," states in Section 1.1.1, that BellSouth shall, upon aXessa's request and to the extent technically feasible, provide to aXessa "access to its unbundled network elements for the provision of [aXessa's] telecommunications service." Section 1.1.2 provides that access to UNEs "may be connected to other Services and Elements provided by BellSouth or to any Services and Elements provided by the CLEC itself . . ." and Section 1.1.3 states that aXessa "may purchase Unbundled Network Elements for the purpose of

combining such Unbundled Network Elements by [aXessa] in any manner that is technically feasible."

Despite these provisions, BellSouth fails to offer service "equivalent in quality," has refused to allow aXessa access to its UNEs in order to combine them, and in addition, refused to connect combine UNEs to the OC3, a tariffed item.

K. This Commission Has The Authority to Order BellSouth To Provide A Bundled CLEC/Enduser Loop As One UNE, Or To Recombine UNEs

This Commission has the authority to order BellSouth to not decombine the UNEs, or to recombine UNEs, as the Act merely provides minimum requirements and a state may require more than the minimum requirements (47 U.S.C. § 253(b)). As quoted above, the Competition Rules in Louisiana already require the ILEC, *i.e.*, BellSouth, to provide "equivalent access in the same manner as used by the ILEC." In addition, BellSouth, in order to obtain a favorable § 271 certification of this Commission, promised this Commission it would recombine UNEs when feasible.[11]

Additionally, BellSouth must again obtain this Commission's determination that it meets the remaining requirements of § 271 before it can seek FCC approval to provide long distance service. To counter the FCC's finding of a lack of competition, this Commission has the authority to order BellSouth either not to unbundle a C-LEC/enduser loop, or to combine UNEs.[12]

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[11] BellSouth has never stated that combining the UNEs is not technically feasible.

[12] Exhibit "1" indicates that BellSouth has asked for a rehearing of the FCC's rejection of its § 271 Application. The FCC is not likely to find that BellSouth met all the requirements of § 271.

The Oregon Commission choose not to order its ILECs to recombine or not decombine elements, even though it considered these options. Though it considered this course of action the optimum solution, the Oregon Commission thought that such a solution would embroil everyone in years of litigation, thus retarding competition. However, in Louisiana the situation is different:

a) The LPSC has already competition rules in place; and

b) The FCC has held twice that BellSouth's policies are not competitive; and

c) BellSouth promised this Commission to combine elements when feasible; and

d) BellSouth has to prove that viable competition exist prior to being able to serve the long distance market.

Thus, BellSouth will have to make a decision: either it allows real competition to take place enabling it to provide long distance service, or it can continue to retard and obstruct the onset of competition, but with the consequence that it will not be able to provide long distance service! BellSouth now wants it both ways! Section 271 says it cannot.

L. The FCC Recently Ordered BellSouth To Combine UNEs And Not Insist On Collocation, If BellSouth Wants Its § 271 Application Approved

In Order 98-271, the FCC specifically discussed the very same issue at hand, *i.e.*, combining network elements, in ¶¶ 161-71 (Exhibit "9") and concluded, *inter alia*:

> BellSouth fails to make a *prima facie* showing that it can provide nondiscriminatory access to unbundled network elements through the one method that it has identified for such access — collocation. BellSouth's collocation offerings in Louisiana contain the same defects as the collocation arrangements that the Commission found deficient in the *BellSouth South Carolina Order*. In addition, we find that **BellSouth can not limit a competitive carrier's choice to collocation as the only method for gaining access to and recombining network elements.** (Emphasis added.) FCC 98-271, pp. 102-03.

The FCC rejected BellSouth's notion that it does not have to provide new entrants with any method of combining elements other than through collocation and noted that BellSouth **failed** to show that there is **actual** commercial usage of collocation anywhere in Louisiana (¶ 166) and concluded:

> 167. Accordingly, we conclude that **BellSouth fails to demonstrate that, as a legal and practical matter**, it can make available access to unbundled network elements through collocation in a manner that allows new entrants to combine network elements and provide competitive service on a widespread basis. BellSouth therefore does not satisfy the requirement of item (ii) of the competitive checklist for nondiscriminatory access to unbundled network elements.
>
> 168. In addition, **BellSouth's offering in Louisiana of collocation as the sole method for combining unbundled network elements is inconsistent with section 251(c)(3).** Competitive carriers are entitled to request any other 'technically feasible' methods of gaining access to and combining unbundled network elements that are consistent with the holdings of the Eighth Circuit. In enacting sections 251(c)(3) and section 251(c)(6), Congress established two separate provisions that impose distinct duties on incumbent LECs in providing access to their networks. Section 251(c)(6) imposes an obligation of incumbent LECs 'to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements . . . [.]' Section 251(c)(6) was designed to clarify the authority of the Commission to require physical collocation in light of an earlier decision by the court of appeals that the Commission lacked such authority. Section 251(c)(3) imposes a separate obligation on the incumbent LEC to provide 'nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.' Section 251(c)(3) also specifies that incumbent LECs shall provide unbundled network elements 'in a manner that allows requesting carriers to combine such elements in order to provide . . . telecommunications service.' **Nothing in the language of section 251(c)(3) limits a competing carrier's right of access to unbundled network elements to the**

use of collocation arrangements. If Congress had intended to make collocation the exclusive means of access to unbundled network elements, it would have said so explicitly. Instead, Congress adopted an additional requirement under section 251(c)(3) that imposes different and distinct duties on incumbent LECs.

169. Our rules implementing sections 251(c)(3) also make clear that **incumbent LECs can not offer collocation as the sole method for gaining access to and combining unbundled network elements.** Section 51.321 of the Commission's rules states that technically feasible methods of access to unbundled network elements 'include, but are not limited to,' physical and virtual collocation at the incumbent LECs' premises. Similarly, in section 51.5, the Commission defined 'technically feasible' with reference to collocation 'and other methods of achieving interconnection or access to unbundled network elements.' **The Eighth Circuit decision did not disturb** either section 51.5 or section 51.321, and these rules therefore remain in full effect.

170. The Eighth Circuit decision also upheld the Commission's interpretation of section 251(c)(3) that allows requesting carriers to obtain the ability **to provide finished telecommunications services entirely by acquiring access to the unbundled elements of an incumbent LEC's network**. Because collocation requires competitors to provide their own equipment, **it appears that BellSouth's collocation requirement may be inconsistent with the Eighth Circuit decision** insofar that it upheld our rules permitting competing carriers to provide telecommunications services *completely through* access to the unbundled elements of an incumbent LEC's network. Accordingly, we find that an incumbent LEC can not limit a competitive carrier's choice to collocation as the only method for gaining **access to and recombining network elements**. (Bolded emphasis supplied, italics emphasis in original.) (Footnotes omitted.) FCC Order 98-271, pp. 104-06.

In Exhibit "1" BellSouth lamely suggest that the FCC "relied on an incorrect statement of BellSouth's position." It then negated this by stating that BellSouth "believes that collocation is the only method of access contemplated under the 1996 Act"! Then it proves that the FCC is correct by refusing to execute aXessa's order, because aXessa does not want to collocate! It is

true that BellSouth vaguely expresses its willingness to "contemplate" other methods. However, aXessa cannot afford such "contemplation" by BellSouth! BellSouth "contemplated" since July, and **never** changed its mind, while stringing aXessa along with "proposals" which never came close to doing what the LPSC, the FCC and the Act requires it to do. Delay is the best anti-competitive weapon of a former monopolist. A small fledgling CLEC cannot afford to pay for BellSouth's mega-fights at the local and national level. aXessa needs to sell its services to its customers! BellSouth "contemplates" CLECs into oblivion. aXessa has offered to combine the UNEs itself immediately, which was rejected by BellSouth. BellSouth refuses to provide a full loop and forces aXessa to buy segments, which it then does not want to combine. aXessa has demonstrated that BellSouth's position is unlawful and anti-competitive, and that aXessa is entitled to the relief it seeks.

M. BellSouth's "Offer" That It Will Only Combine UNEs Through Collocation Is Anti-Competitive

In addition to the FCC, which rejected specifically BellSouth's contention that collocation is the only method of combining UNEs, recently the Oregon Commission issued an Order[13] rejecting collocation as an appropriate method to combine UNEs. BellSouth, upon information and belief, only offers physical and virtual collocation. (*See*, Drawings 2 and 6, Exhibit 0.) Other ILECs offer additional types of collocation, which are less costly and burdensome to the CLECs. Thus, in Oregon, GTE offers "common" collocation and USWC offers "cageless" collocation in addition to physical and virtual collocation. Despite the less burdensome nature of

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[13] Order 98-444 entered on November 13, 1998, in Docket No. UT 138, 139 (Exhibit "8.") All footnotes in the quotes are omitted.

these other forms of collocation, the Oregon Commission rejected all collocation options as inappropriate, inefficient, inferior and costly methods, stating:

> **2. Mandatory Collocation.**
>
> The Commission rejects the USWC and GTE [ILECs] proposals to require collocation as a precondition to providing requesting carriers with access to building blocks. Although ILECs are obligated to offer physical and virtual collocation under the Act, there is nothing in the Act or the Eighth Circuit's decision which states that the collocation is the only means of obtaining access to unbundled elements. Moreover, the record in this case demonstrates that **mandatory collocation will impede the progress of local exchange competition by subjecting requesting carriers to unnecessary costs, delays, risks, inefficiencies, and inferior service quality**. For the reasons discussed below, we conclude that mandatory collocation would produce building block access arrangements that are **discriminatory and anticompetitive in violation of the Act** and Oregon law. (Footnote omitted.) (Emphasis added.) *The Oregon Order*, pp. 35-36.

The Oregon Commission found that collocation was prohibitively expensive for CLECs:

> (a) The record indicates that requesting carriers will incur substantial expense in order to provide service under the mandatory collocation arrangements proposed by USWC and GTE. Carriers such as OGI [a CLEC] will have to pay as much as $50,000 in up front costs and $1,000 in monthly expenses for each ILEC central office where collocation is required. At OGI's current level of operations, this amounts to nearly one half million dollars in capital cost just to enable OGI to combine high capacity loops and transport elements. We agree with Mr. Pestaner that the magnitude of these costs, together with the monthly costs to purchase additional tie cables and frame terminations contemplated by the ILEC collocation proposals, **will slow the pace of local exchange competition and discourage smaller carriers from serving low density areas.** The only carriers that might be able to afford to establish more extensive collocation arrangements are larger, well-financed carriers whose primary interest is serving densely populated urban areas such as the Portland metropolitan area. Even then, **the number of central offices** in the Portland area would make it **very costly to establish a ubiquitous presence.**

> In all likelihood, the collocation of facilities would be limited to those central offices which serve major business districts rather than residential areas. (Emphasis added.) *The Oregon Order*, p. 36.

The increase in cost for aXessa is in about the same magnitude as reflected in the above quote.

The Oregon Commission found that the ILECs would run out of space if it required mandatory collocation to combine UNEs:

> USWC and GTE argue that it is extremely difficult to project the demand for collocation space unless competitive providers forecasts of their building block requirements. Intervenors acknowledge the importance of forecasting, but also point out that the growth of local exchange competition will depend on many factors, perhaps the most important being the ability to access building blocks on equitable terms. Given these uncertainties, we agree with Mr. Wilson and Ms. Petti that it is reasonable to assume that local markets characterized by effective competition will exhibit roughly the same amount of customer 'churn' that now exists in long distance markets. On that basis, it is fair to assume that 40-50 percent of the customers now served by USWC and GTE may elect to receive local exchange service from competitive providers. . . .
>
> * * *
>
> Because the ILEC virtual collocation proposals are impractical and discriminatory in effect, they cannot be considered reasonable alternatives to physical collocation. As such, they do not mitigate our concerns about the lack of available space for physical collocation at USWC and GTE central offices. *The Oregon Order*, pp. 36-38.

The Oregon Commission further found that virtual collocation arrangements are "so complicated and fraught with potential problems that neither [virtual or physical] collocation can reasonably be expected to be used by carriers to any significant extent," (*The Oregon Order* at p. 37) and further, that collocation caused substantial delays, preventing immediate competition:

> (c) Aside from the problem of space availability is the question of the length of time necessary to establish collocation arrangements. USWC and GTE indicate that they will attempt to construct collocation areas within **90 days after arrangements with carriers have been finalized**. While we have no reason to doubt that the ILECs will make good faith efforts to meet this objective, there are matters that may prolong the amount of time required to implement collocation arrangements. To begin with, the 90-day time period envisioned by the ILECs **does not include any of the preliminary agreements that the carriers must enter into before the collocation area is constructed**. Since both USWC's illustrative tariff and GTE's interstate physical collocation tariff allow approximately **six months** to finalize collocation arrangements, it is possible that **several months could be consumed before construction** is completed. USWC and GTE do not indicate the average amount of time it has taken to finalize the collocation agreements they have negotiated to date. (Emphasis added.) *The Oregon Order*, p. 38.

The aXessa/BellSouth Interconnection Agreement creates delays very similar to those described above. Moreover, collocation causes a shut-off of customers for a period of time that cannot be precisely determined:

> (d) Another serious shortcoming of the USWC and GTE mandatory collocation proposals is the disruption of customer service that would occur after existing building block combinations have been taken apart by the ILECs and before new collocation arrangements can be established. As Mr. Pestaner emphasizes, OGI's [a CLEC] customers are faced with precisely this situation. Those customers would have their local service disconnected and have to obtain service from another carrier while OGI establishes the mandatory collocation arrangements required by USWC and GTE. *The Oregon Order*, p. 38.

A customer cannot be expected to obtain services from a CLEC if the CLEC cannot tell the customer when the collocation equipment can be installed, or when the collocated space will be constructed, and expect the customer to do without service in the interim. Thus, the collocation requirement increases BellSouth's revenues (it receives money to construct and prepare

collocated space and receives monthly access charges and it seeks to receive up to $10,000.00 a month for aXessa's central office connection), but does not create real competition: in effect, it is a **barrier** to competition.

Collocation also increases circuit failures and results in diminished quality of service, because many more jumper wires and connections are required than is necessary if the UNEs are combined by BellSouth:

> That risk is magnified by the extensive handling and manipulation of wires required by the ILEC proposals. It is also significant that all of these witnesses have experienced situations where reducing the number of circuit connections and intervening distribution frames lessened the number of failures and improved customer service quality. When questioned on this issue, even GTE witness Alfred Banzer acknowledged that additional circuit connections create the potential for additional problems and service breakdowns.
>
> '(f) Another troubling aspect of the ILEC access proposals is that they require more connections at the MDF [main distribution frame] and increase the rate at which the capacity of the MDF is exhausted. USWC witness Schmidt agreed with AT&T witness Petti that 'growing' an MDF is extremely difficult. USWC and GTE did not indicate how they intend to address this problem as local competition expands beyond the minimal level that now exists. (Footnotes omitted.) *The Oregon Order*, p. 39

Hence, the Oregon Commission decided that since the ILECs did not voluntarily agree to combine UNEs, direct access by competitors to combine the UNEs themselves was, though not optimum, a reasonable option:

> The Commission is persuaded that the burdensome and discriminatory nature of the ILEC access proposals effectively precludes competing carriers from combining building blocks. To obviate the shortcomings of the ILEC proposals, we concur with the Joint Intervenors that requesting carriers **should be allowed direct access to the MDF and other ILEC facilities for the purpose of combining** building blocks. This process will enable carriers to

> connect the jumper wires between appropriate terminals connections directly on the MDF, rather than at the SPOT frame, common collocation frame, or individual carrier collocation area. As Mr. Croan explains, this approach has the very real and essential benefit of **maintaining the exact same network configuration that the ILEC uses in its provision of service without involving the technically inferior** access associated with the USWC and GTE proposals. (Footnotes omitted.) (Emphasis added.) *The Oregon Order*, p. 44.

Thus, after extensive proceedings, the Oregon Commission found that the Act and the Eighth Circuit required at the minimum, direct access by a CLEC to BellSouth's network. In response to the ILECs complaints that "allowing CLEC personnel to have access to the MDF will threaten the reliability, integrity, and security of the telephone network," the Oregon Commission stated:

> Essentially, the ILECs claim that it is more important to protect the integrity of their circuits than it is to protect the integrity of CLEC circuits. We disagree. **ILEC circuits are not entitled to any greater level of reliability or security than CLEC circuits.** Nondiscriminatory access requires that all carriers should be placed on an equal footing whenever it is reasonable to do so. (Emphasis added.) *The Oregon Order*, p. 45.

The Oregon Commission recognized that direct access is not superior to having UNEs combined by the ILEC itself:

> Although direct access is far less burdensome than the access proposals forwarded by the ILECs, **it is not as efficient or economical as having the ILECs combine building blocks themselves**. For example, where a carrier elects to buy all of the building blocks necessary to provision a retail service, direct access will still require the manual removal and replacement of jumper wires, an activity that would be unnecessary if existing building block combinations are simply left in place. Also, various circumstances may preclude the ILECs and CLECs from using third party vendors to perform the required decombinations and recombinations. In that event, the ILEC and CLEC technicians will

have to engage in the more complicated process of performing coordinated cut-overs of customer service. These not insignificant concerns because they will make the decombine/recombine process more cumbersome and increase the overall cost of providing service. Nevertheless, **these problems pale in comparison to the complicated processes and unnecessary costs imposed by the ILEC access proposals.**

As a final matter, it must be kept in mind that the **ILECs are not compelled to dismantle existing combinations of building blocks**. In fact, both USWC and GTE are careful to emphasize that **they may continue to combine unbundled elements if they choose to do so.** That being the case, the ILECS and CLECs may always enter into voluntary agreements allowing the ILECs to continue combining building blocks for a fee instead of having the CLEC perform the comminations themselves. Of course, such agreements would have to be implemented on a nondiscriminatory basis. (Footnotes omitted.) (Emphasis added.) *The Oregon Order*, pp. 45-46.

N. The Maryland and Texas Commissions Prohibit ILECs to Pull Apart and Reassemble Extended Links

On November 2, 1998, the Maryland Public Service Commission, considering the very same matters that are at issue in this Complaint, in Order No. 74671 (Exhibit "11"), prohibited its jurisdictional ILEC from refusing to provide CLECs extended link service unless the CLECs collocate. After an extensive discussion of various legal issues, the Commission stated:

When a competing carrier orders unbundled network elements, the separation of those elements by BA-MD [Bell Atlantic, the ILEC] is unacceptable. **Such separation and recombination serves no public purpose and provides no cost benefits**. BA-MD will incur additional costs in disassembling its network and the competing carrier will also incur additional costs putting these elements back together again in collocation space. **These additional and unnecessary costs ultimately would be passed on to the consumer**.

Furthermore, disassembling network elements **will put customers out of service unnecessarily** while the disconnection and subsequent reconnections are made. The many new cross connections required will introduce **new points of failure** into the

> system and thus **unnecessarily threaten the quality of service** which customers receive from competing carriers. There are no technical or service-enhancing reasons for BA-MD to require that customers' existing service arrangements be dismantled and reassembled at the competing carrier's collocation. For existing BA-MD customers, the combined unbundled network elements are already in place, connected together and fully operational. **A competing carrier that wants to offer service to an existing customer using the already combined elements should be able to receive those elements in a manner that allows the competing carrier to serve customers without interrupting service.** (Emphasis added.) (Order Number 75671, pp. 19-20.)[14]

Likewise, the Staff of the Texas Commission has recommended that the Commission design an "extended link" (*see* Executive Summary of this brief) as a single, unbundled, UNE, eliminating the need for collocation in every end office, and preventing the ILEC from refusing to combine separate loop and transport elements. (Exhibit "12.")

State commissions are rejecting the untenable position taken the ILECs because the ILEC's position is anticompetitive and violative of federal and state laws. aXessa urges this Commission to do likewise.

O. Time is of the Essence

Since BellSouth has now stated that it will not provide aXessa access to its customers unless aXessa collocates, aXessa, in effect, cannot offer viable competition outside a one mile radius at reasonable rates. Therefore, it seeks an urgent order from this Commission to allow immediate access to the facilities of BellSouth so that it can install the necessary jumpers and begin service to its customers.

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[14] Bell Atlantic appealed this decision to the United States District Court in Baltimore, Maryland.

Why is aXessa in a hurry?

aXessa has been negotiating with BellSouth since June, 1998. Its order was placed on September 30, 1998. After numerous efforts to have BellSouth respond, and after BellSouth was informed aXessa that "its request is on hold," it took until November 19, 1998, to deny aXessa's request. aXessa has invested significant capital, in the seven figures, to purchase a switch and it has had significant other investments as well in order to provide facilities-based competitive services. aXessa is paying BellSouth a monthly fee of more than $5,000.00 a month to interconnect its switch, but without the jumper aXessa is not able to connect to its customer! Everyday, the costs are mounting, without aXessa being able to receive revenues. aXessa cannot properly market its services if it cannot provide the services to the endusers, and cannot tell them the dates on which it can start serving. BellSouth's conduct is anti-competitive. The Telecommunications Act, the LPSC Rules and Regulations, the FCC, and the Eighth Circuit have imposed the duty on BellSouth to either provide the UNEs requested, or, at the minimum allow aXessa to combine UNEs itself. BellSouth's refusal is only based on its wish to prevent or delay facilities-based competition in its area, even though at the same time it seeks to convince the FCC otherwise. aXessa seeks the help of the LPSC to order BellSouth to abide by the law. aXessa further reserves all rights to seeks redress and damages incurred as a result of BellSouth's conduct.

CONCLUSION

aXessa seeks the following redress: either a) prevent BellSouth from unbundling the transport loop from aXessa's central office to endusers; or b) have BellSouth combine the UNEs as an agent of aXessa; or c) order immediate access by aXessa to the BellSouth's network to combine the UNEs itself. All these options are supported by this Commission's rules, the FCC,

and the Eighth Circuit. Only BellSouth's intransigence stands in the way of having aXessa reach its customers. Probably the direct access option will be the most practical and expeditious under the circumstances.

aXessa beseeches this Commission to act soon: its costs are mounting, and customers are waiting to be served. BellSouth should be forced to live up to its obligations under the Act and the LPSC Competition Rules.

Respectfully submitted:

Constance Charles Willems (13486)
MCGLINCHEY STAFFORD
A Professional Limited Liability Company
643 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 586-1200
Fax: (504) 596-0304

ATTORNEYS FOR:
COLUMBIA TELECOMMUNICATIONS, INC., d/b/a AXESSA

CERTIFICATE OF SERVICE

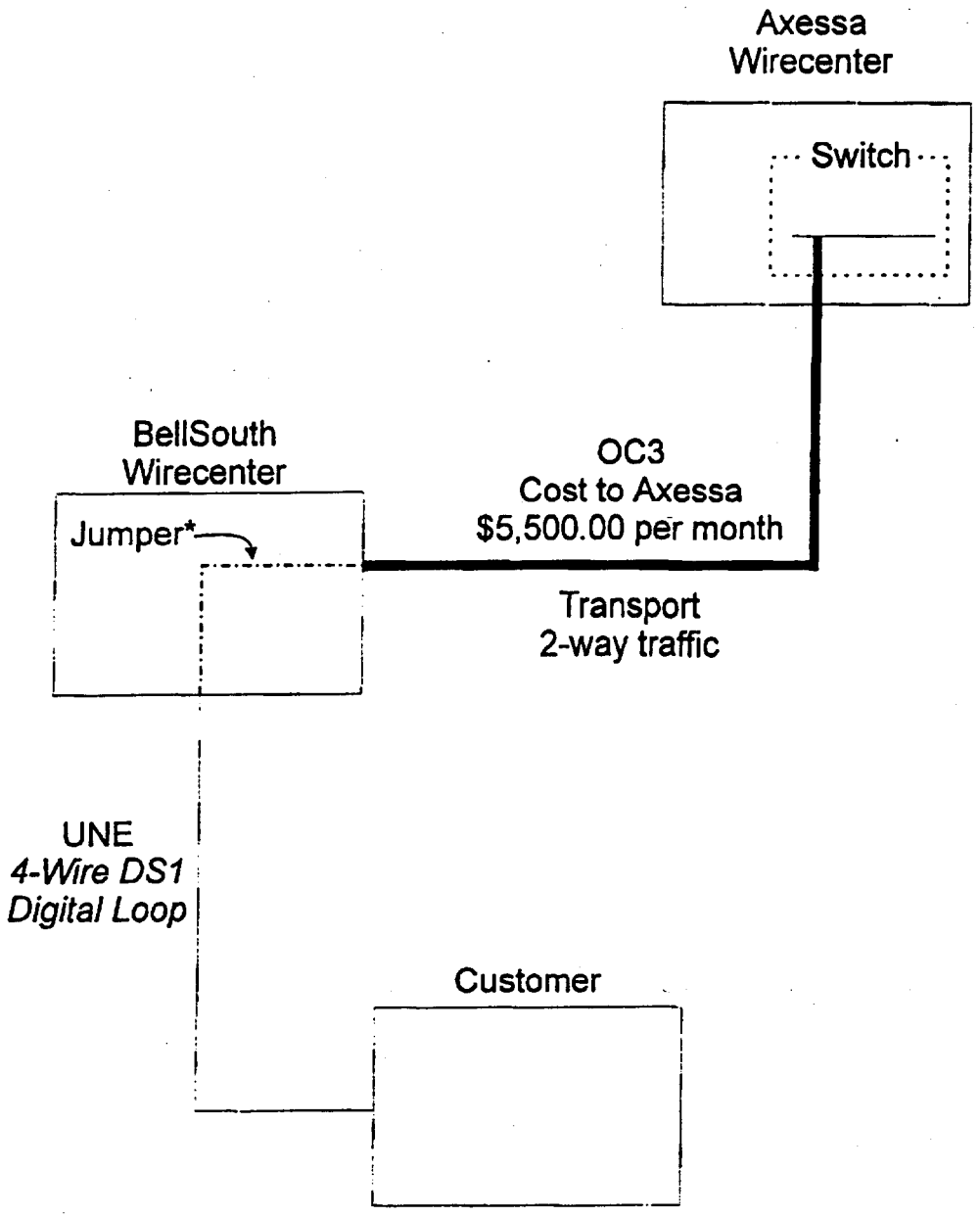
I hereby certify that a copy of the above and foregoing Complaint has been served upon Victoria K. McHenry, 365 Canal Place, Room 1870, New Orleans, Louisiana 70140, General Counsel, by hand delivery, this 19th day of January, 1999.

CONSTANCE CHARLES WILLEMS

90761.1

E X H I B I T S

Axessa's UNE Order



NOTE: Axessa requested service within one mile from BellSouth wirecenter!
* Axessa pays for UNE and Jumper.

EXHIBIT
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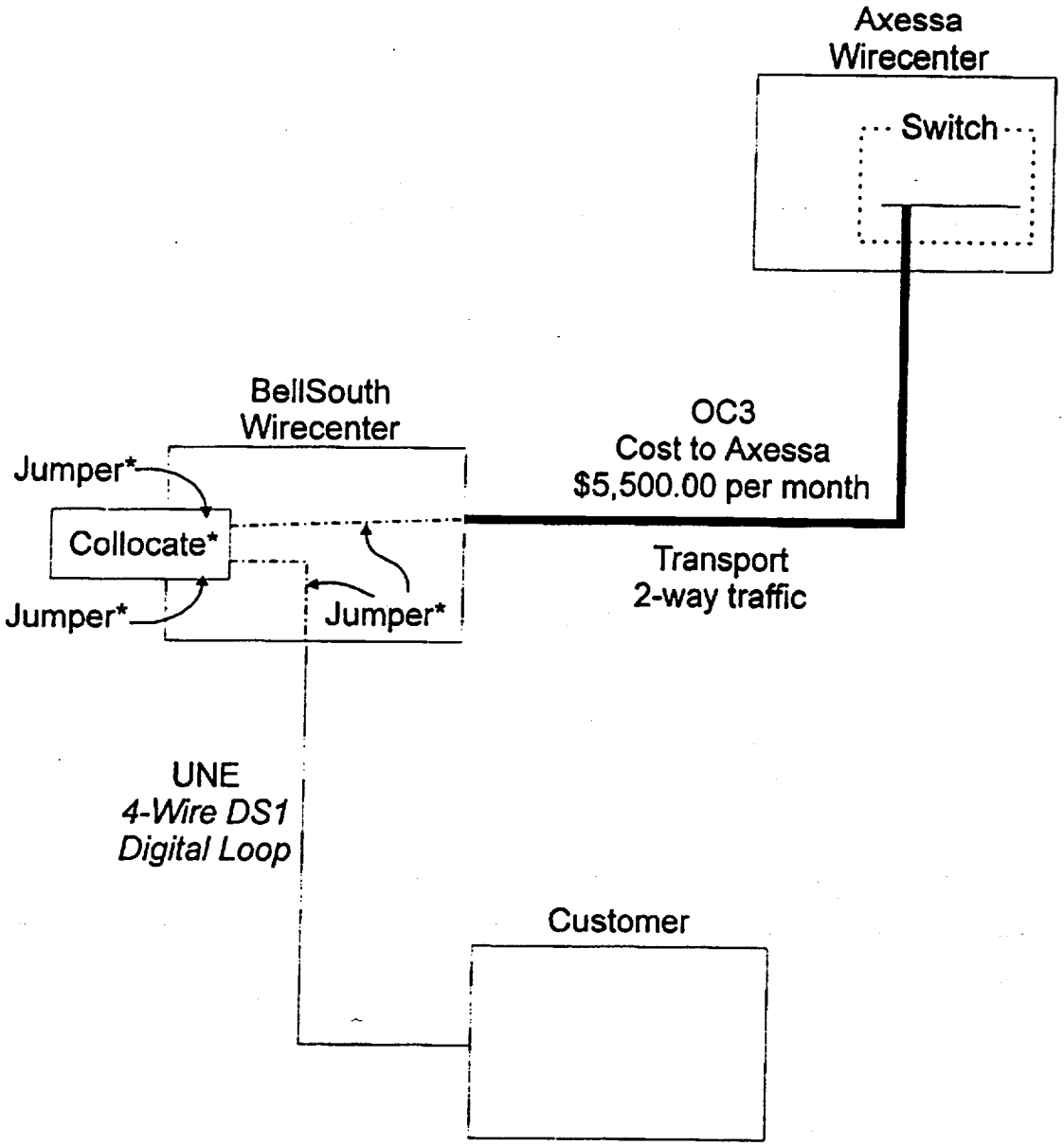
Drawing 1

BellSouth does not want to combine OC3 (tariffed item) with UNE, unless Axessa collocates.



NOTE: Axessa requested service within one mile from BellSouth wirecenter!
* Axessa pays for UNE, Collocation and Jumpers. Additional Jumpers may be needed.

Drawing 2

BELLSOUTH

BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.E
Atlanta, Georgia 30375

August 26, 1998

Mr. Tom Nolan
President
Columbia Telecommunications, Inc.
1340 Poydras Street
Suite 350
New Orleans, Louisiana 70112

Re: Your letter dated August 18, 1998

Dear Mr. Nolan:

This is in response to your letter dated August 18, 1998, and the subsequent conversation on August 19, 1998 with BellSouth employees Pat Finlen and David Thierry. It is my understanding that Columbia is proposing that its T-1 UNE loop be connected by BellSouth to the OC-3 facilities Columbia has purchased from BellSouth's tariff.

The interconnection agreement executed between the parties contains the rates, terms and conditions that govern BellSouth's provision of unbundled network elements to Columbia. Section 2.2.2 of Attachment 2 states that: "The provisioning of service to a customer will require cross-office cabling and cross-connections within the central office to connect the loop to a local switch or to other transmission equipment in co-located space." As such, BellSouth will deliver to Columbia the unbundled T-1 loop to Columbia's collocation arrangement. BellSouth will deliver the OC-3 facilities to the Columbia collocation arrangement as well. Columbia may, pursuant to section 1.1.3 of Attachment 2, connect the OC-3 facilities and the T-1 UNE loop to provide the telecommunications service requested by Columbia's end user. The contract language cited is consistent with the current state of the law regarding access to unbundled network elements.

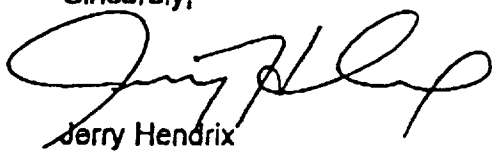
Contrary to the legal opinion provided by Mr. Hardman, an incumbent local exchange company such as BellSouth may rely on collocation arrangements to satisfy its obligation under section 251(c)(3) to provide UNEs. Indeed, the Act itself confirms that collocation is the appropriate method of access under section 251(c)(3). Congress imposed upon incumbent local exchange companies the "duty to provide...for physical collocation of equipment necessary for interconnection or access to unbundled network

EXHIBIT
3

elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6). Congress thus envisioned that CLECs would obtain access to UNEs under section 251(c)(3) through collocation. Thus, CTI's allegation that BellSouth's collocation requirement is designed to stifle competition and increase competitor's costs is totally baseless and BellSouth adamantly denies this assertion.

The interconnection agreement executed between the parties authorizes Columbia to request either a virtual collocation arrangement via BellSouth's FCC Tariff No. 1 or a physical collocation arrangement via Attachment 4 of the interconnection agreement. BellSouth employees will be happy to discuss either of these alternatives with Columbia.

Sincerely,



Jerry Hendrix

BELLSOUTH

BellSouth Interconnection Services
9th Floor
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205 321-4970/888 478 2780
Fax 205 321-4340
Pager ~~800-329-1377~~ 319-6980
Internet
william.d.french@bridge.bellsouth.com

Bill French
Sales Director
CLEC Interconnection Sales

September 25, 1998

Mr. Tom Nolan
President
Axessa (d.b.a. Columbia Telecommunications, Inc)
1340 Poydras Street
Suite 350
New Orleans, LA 70112

Dear Tom:

During our meeting on August 31, 1998, we discussed several issues that related to local interconnection, including collocation, unbundled network elements (UNEs) and resale. This letter will serve as a follow up to our discussion regarding BellSouth's position on collocation and combination of UNEs.

BellSouth's proposed delivery method for UNEs complies with Section 251(c)(6) of the Act. In Section 251(c)(6) Congress imposed upon incumbant local exchange companies the "duty to provide...for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." Congress thus envisioned that new entrants who obtained access to UNEs under Section 251(c)(3) would combine those UNEs through collocation

While the Eighth Circuit ruling does authorize "telecommunications carriers to achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network," the other parts of its opinions demonstrate that it did not intend for the new entrant to make no investment or bear no expense to receive the unbundled network elements. For example, the Eighth Circuit stated that:

> A carrier providing service through unbundled access, however, must make an up-front investment that is large enough to pay for the cost of acquiring access to all of the unbundled elements of an incumbent LEC's network that are necessary to provide local telecommunications services without knowing whether consumer demand will be sufficient to cover such expenditures. Moreover, our decision requiring the requesting carriers to combine the elements themselves increases the costs and risks associated with unbundled access as a method of entering the local telecommunications industry and simultaneously makes resale a distinct and attractive option. With resale, a competing carrier can avoid expending valuable time and resources recombining unbundled network elements (120 F.3d at 815)

EXHIBIT
4

The Eighth Circuit Court further explained that "the degree and ease of access that competing carriers may have to the incumbent LEC's network is...far less than the amount of control that a carrier would have over its own network" (120 F.3d at 816). Thus, the Eighth Circuit ruled out any requirement of direct access to central office equipment for purpose of a new entrant's UNE combination activities.

In summary, BellSouth's proposal to deliver unbundled network elements to a physical or virtual collocation arrangement accomplishes the goals of delivering the individual elements to the new entrant in the most efficient and economical manner and in such a way that the elements can be combined by the new entrant itself.

If you have additional questions regarding this matter, please feel free to call me at (205) 321-4970.

Sincerely,

William D. French

cc: David Barron
Darryl Washington

BellSouth Telecommunications, Inc.
Suite 3000
365 Canal Street
New Orleans, Louisiana 70130-1102

504 528-7900

Fax: 528-7554

D. R. Hamby
Regulatory Vice President

November 19, 1998

Honorable Jay A. Blossman, Jr.
Commissioner - LPSC
645 Lotus Drive North, Suite A
Mandeville, LA 70471

Honorable James M. Field
Commissioner - LPSC
One American Place, Suite 1510
Baton Rouge, LA 70825

Dear Commissioners:

We have been asked to respond to the November 5, 1998 letter from Connie Willems on behalf of aXessa concerning interconnection facilities between BellSouth and aXessa. Attached are three items which address our response: a schematic which illustrates the major items at question; a copy of Ms. Willem's November 5 letter; and finally, a point-by-point response to aXessa.

First, let me address Ms. Willem's comments in Item #9 of her letter which assert that "BellSouth's conduct has been in bad faith and is anti-competitive" and that "BellSouth's refusal is only based on its wish to prevent facilities-based competition in its area." These words may be commonplace for lawyers, but to me they are disturbing, and (most importantly) untrue. BellSouth has been negotiating with aXessa for over four months. During that time, there have been numerous meetings with aXessa involving both Louisiana and Headquarters representatives. We have assisted and advised aXessa on the most profitable way for them to enter the market in competition against us. We have attempted to answer every question or issue raised by aXessa. While they may not like or agree with some of our answers, to term our position as "anti-competitive" is a gross mis-characterization.

EXHIBIT
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Curiously, Ms. Willem's letter, which consistently misstates the facts, also fails to even mention the real issue between BellSouth and aXessa. Stated simply, aXessa wants BellSouth to recombine UNE's which exactly duplicate BellSouth retail services and thereby provide aXessa with an approximate 60% discount instead of the 20.72% discount ordered by the LPSC. Specifically, they want to purchase DS1 loop and transport UNE's outside of New Orleans and have BellSouth extend them for free to their switch in New Orleans. The retail service which provides this arrangement is MegaLink, which is available for resale and has been offered to aXessa. See attached EXAMPLE.

If aXessa wants to utilize DS1-type service outside of New Orleans, they have two choices per the LPSC regulations and the Eighth Circuit ruling. First, they can order MegaLink at a 20.72% discount. If they prefer, they can order UNE's and combine the UNE's themselves. Other CLEC's in Louisiana are using both these methods today.

BellSouth is committed to doing everything in its power to implement local competition in our area. We believe that LPSC regulations and the federal law, as interpreted by the Eight Circuit Court, require that we take the stance that we have assumed with aXessa. Frankly, the assertion that we would block facilities-based competition is foolish in light of the requirements for our entry into the long distance market. Nevertheless, we remain open to continuing our meetings with aXessa or any other competitor to pursue legal, fair interconnection.

Thank you for this opportunity to respond to the aXessa letter. We would be happy to meet with you and aXessa to further discuss these matters if necessary.

Sincerely,

Rick Hawley

Attachments

cc: Ms. Connie Willems

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of February, 1999, served the foregoing Motion for Leave to File Annexed Opposition to BellSouth Petition for Reconsideration and the annexed Opposition to BellSouth Petition for Reconsideration upon all parties of record in this proceeding by mailing true copies thereof, first class postage prepaid, to all such parties or their representatives, as shown on the following list:

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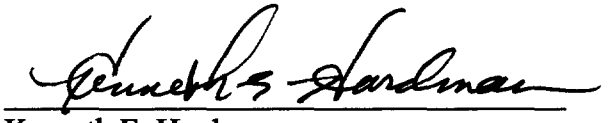

Kenneth E. Hardman